

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

IN RE POLYURETHANE FOAM ANTITRUST
LITIGATION

MDL Docket No. 2196

Index No. 10-MD-2196 (JZ)

Judge Jack Zouhary

This document relates to:

ALL ACTIONS

**DIRECT ACTION (NON-CLASS) PLAINTIFFS'
CLARIFICATION OF RESPONSE TO DEFENDANTS'
POSITION STATEMENT ON THE TRANSACTION DATA PROTOCOL**

Direct Action (Non-Class) Plaintiffs submit this clarification to the "Plaintiffs' Response to Defendants' Position Statement on the Transaction Data Protocol" ("Plaintiffs' Response") (Dk. 215).

Footnote 5 on page 4 of Plaintiffs' Response states that "[t]he Sealy Plaintiffs, and other Direct Action Plaintiffs, note that they are neither fabricators nor wholesalers." We think this statement requires clarification that "[t]he Sealy Plaintiffs, and most of the other Direct Action Plaintiffs, are neither fabricators nor wholesalers." We understand that there are two plaintiffs in *H.M. Richards*, Case No. 1:11-cv-00067-SA-JAD (N.D. Miss.), and the plaintiff in *Henson*, Case No. 1:11-cv-00095-SA-JAD (N.D. Miss.), who may be fabricators depending upon Defendants' definition (which we do not have). We apologize for the lack of precision in the referenced sentence above complicated by the compressed time to make the filing while attending an all-day meet-and-confer with defense counsel the same day. Direct Action (Non-Class) Plaintiffs point was/is that they do not compete against Defendants. And, even if *arguendo* some among them are fabricators, that does not mean, for instance, that Serta, Sealy and Simmons are or that they compete against Defendants. Direct Action (Non-Class) Plaintiffs

KENNY NACHWALTER, P.A.

are not participating in the class action – and thus downstream discovery from them cannot be relevant to Rule 23 factors (commonality, typicality, etc.) regarding a class in which they are not participating, *see In re K-Dur Antitrust Litig.*, 2007 WL 5302308 at *8 (D.N.J. Jan. 2, 2007) – and they each have a separate claim and business, which is why, notwithstanding coordination efforts, Defendants' Rule 34 requests and each Direct Action (Non-Class) Plaintiffs' response are essential to frame the debate and this Court's determination regarding downstream discovery as to them.

We informed liaison defense counsel of this filing in advance and noted that we did not object if Defendants took an additional page to respond to this submission.

Dated: August 5, 2011

Respectfully submitted,

KENNY NACHWALTER, P.A.
Richard Alan Arnold, Esquire
William J. Blechman, Esquire
Douglas H. Patton, Esquire*
James T. Almon, Esquire
201 South Biscayne Boulevard
Suite 1100
Miami, Florida 33131-4327
Tel: (305) 373-1000
Fax: (305) 372-1861
E-mail: wblechman@kennynachwalter.com

By: William J. Blechman
William J. Blechman

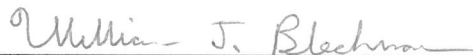
***Liaison Counsel for Direct Action (Non-Class) Plaintiffs*¹**

*LICENSED TO PRACTICE LAW IN MA, UT, DC AND NY; NOT LICENSED IN FLORIDA.

¹ Plaintiffs' prior joint submission inadvertently omitted "liaison" as qualifying our status.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served via ECF on counsel of record
this 5th day of August, 2011:



William J. Blechman

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